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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

Case No. **2011-140**

12 In the Matter of the Accusation Against:

13 **DIRK R. DEROGGENBUKE**
14 **56 Mallorn Drive**
Aliso Viejo, CA 92656

15 **Registered Nurse License No. 551550**

16 Respondent.

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about February 2, 1999, the Board of Registered Nursing issued Registered
24 Nurse License Number 551550 to Dirk R. DeRoggenbuke (Respondent). The Registered Nurse
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on December 31, 2010, unless renewed.
27
28

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 2811(b) of the Code states:

Each such license not renewed in accordance with this section shall expire but may within a period of eight years thereafter be reinstated upon payment of the biennial renewal fee and penalty fee required by this chapter and upon submission of such proof of the applicant's qualifications as may be required by the board, except that during such eight-year period no examination shall be required as a condition for the reinstatement of any such expired license which has lapsed solely by reason of nonpayment of the renewal fee. After the expiration of such eight-year period the board may require as a condition of reinstatement that the applicant pass such examination as it deems necessary to determine his present fitness to resume the practice of professional nursing.

STATUTORY PROVISIONS

7. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct

8. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed

1 by a licensed physician and surgeon, dentist, or podiatrist administer to himself or
2 herself, or furnish or administer to another, any controlled substance as defined in
3 Division 10 (commencing with Section 11000) of the Health and Safety Code or
4 any dangerous drug or dangerous device as defined in Section 4022.

5 (b) Use any controlled substance as defined in Division 10 (commencing
6 with Section 11000) of the Health and Safety Code, or any dangerous drug or
7 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent
8 or in a manner dangerous or injurious to himself or herself, any other person, or
9 the public or to the extent that such use impairs his or her ability to conduct with
10 safety to the public the practice authorized by his or her license . . .

11 . . .
12 (e) Falsify, or make grossly incorrect, grossly inconsistent, or
13 unintelligible entries in any hospital, patient, or other record pertaining to the
14 substances described in subdivision (a) of this section."

15 8. Code section 4060 states:

16 No person shall possess any controlled substance, except that furnished to a
17 person upon the prescription of a physician, dentist, podiatrist, optometrist,
18 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished
19 pursuant to a drug order issued by a certified nurse-midwife pursuant to Section
20 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant
21 pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
22 pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv)
23 of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This
24 section shall not apply to the possession of any controlled substance by a
25 manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist,
26 optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse
27 practitioner, or physician assistant, when in stock in containers correctly labeled
28 with the name and address of the supplier or producer. Nothing in this section
authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or
a naturopathic doctor, to order his or her own stock of dangerous drugs and
devices.

8. Health and Safety Code section 11170 states that no person shall prescribe,
administer, or furnish a controlled substance for himself.

9. Health and Safety Code section 11173, subdivision (a) states:

No person shall obtain or attempt to obtain controlled substances, or
procure or attempt to procure the administration of or prescription for controlled
substances (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the
concealment of a material fact.

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 DRUGS

4 11. Fentanyl Citrate is a Schedule II controlled substance as designated by Health and
5 Safety Code Section 11055(c)(8), and is a dangerous drug pursuant to Business and Professions
6 Code section 4022. Fentanyl is a narcotic (opioid) pain medicine.

7 12. Versed, a brand name for midazolam HCL, is a Schedule IV controlled substance as
8 designated by Health and Safety Code section 11507(d)(21), and is a dangerous drug pursuant to
9 Business and Professions Code section 4022.

10 FACTUAL ALLEGATIONS

11 13. Respondent was employed as a registered nurse at Mission Hospital, in Mission
12 Viejo, California in the catheter laboratory unit. An audit of Mission Hospital's records revealed
13 that Respondent removed from Pyxis machine but failed to document administration of
14 medications as follows:

15 14. Patient A: On March 4, 2009, this patient had a standing order for fentanyl and
16 Versed. On March 4, 2009, Respondent diverted a total of 150 mcg of fentanyl and 3 mg of
17 Versed from this patient as follows:

18 a. On March 4, 2009 at 1334 hours, Respondent withdrew 100 mcg of fentanyl for
19 this patient from the Pyxis machine. At 1441 hours, Respondent withdrew another 100 mcg of
20 fentanyl for this patient from the Pyxis machine. At 1514 hours, Respondent again withdrew
21 another 100 mcg of fentanyl for this patient from the Pyxis machine. Therefore, Respondent
22 withdrew a total of 300 mcg of fentanyl for this patient on March 4, 2009. Respondent
23 documented administration on this patient's medication administration record (MAR) as follows:
24 50 mcg IV of fentanyl at 1428 hours, 50 mcg IV fentanyl at 1457 hours, and 50 mcg IV fentanyl
25 at 1531 hours. Therefore, Respondent documented administration to this patient of a total of 150
26 mcg of fentanyl. Respondent failed to document administration or wastage of the remaining 150
27 mcg of fentanyl.
28

1 b. On March 4, 2009 at 1334 hours, Respondent withdrew 2 mg of Versed for this
2 patient from the Pyxis machine. At 1442 hours, Respondent withdrew another 2 mg of Versed
3 for this patient from the Pyxis machine. At 1514 hours, Respondent again withdrew 2 mg of
4 Versed for this patient from the Pyxis machine. Therefore, Respondent withdrew a total of 6 mg
5 of Versed for this patient on March 4, 2009. Respondent documented administration on the
6 patient's MAR as follows: 1 mg IV of Versed at 1429 hours, 1 mg IV of Versed at 1457 hours,
7 and 1 mg of Versed at 1531 hours. Therefore, Respondent documented administration of a total
8 of 3 mg of Versed to this patient. However, Respondent failed to document administration or
9 wastage of the remaining 3 mg of Versed.

10 15. Patient B: On March 9, 2009, this patient had a standing order for fentanyl and
11 Versed. On March 9, 2009, Respondent diverted a total of 50 mcg of fentanyl and 1.5 mg of
12 Versed from this patient as follows:

13 a. On March 9, 2009 at 1406 hours, Respondent withdrew 100 mcg of fentanyl for
14 this patient from the Pyxis machine. At 1429 hours, Respondent again withdrew 100 mcg of
15 fentanyl for this patient from the Pyxis machine. Therefore, Respondent withdrew a total of 200
16 mcg of fentanyl for this patient on March 9, 2009. Respondent documented administration on the
17 patient's MAR as follows: 50 mcg IV of fentanyl at 1428 hours, 50 mcg IV of fentanyl at 1450
18 hours, 25 mcg IV of fentanyl at 1455 hours, and 25 mcg IV of fentanyl at 1502 hours. Therefore,
19 Respondent documented administration to this patient of a total of 150 mcg of fentanyl.
20 However, Respondent failed to document administration or wastage of the remaining 50 mcg of
21 fentanyl.

22 b. On March 9, 2009 at 1406 hours, Respondent withdrew 2 mg of Versed for this
23 patient from the Pyxis machine. At 1429 hours, Respondent again withdrew 2 mg of Versed for
24 this patient from the Pyxis machine. Therefore, Respondent withdrew a total of 4 mg of Versed
25 for this patient on March 9, 2009. Respondent documented administration on the patient's MAR
26 as follows: .5 mg IV of Versed at 1428 hours, .5 mg IV of Versed at 1439 hours, 1 mg Iv of
27 Versed at 1450 hours, and .5 mg Iv of Versed at 1502 hours. Therefore, Respondent documented
28

1 administration to this patient of a total of 3 mg of Versed. However, Respondent failed to
2 document administration or wastage of the remaining 1 mg of Versed.

3 16. Patient C: On March 12, 2009, this patient had a standing order for fentanyl and
4 Versed. On March 12, 2009, Respondent diverted a total of 400 mcg of fentanyl and 8 mg of
5 Versed from this patient as follows:

6 a. On March 12, 2009 at 0649, Respondent withdrew 5 mg of Versed for this patient
7 from the Pyxis machine. At 0814 hours, Respondent withdrew another 5 mg of Versed for this
8 patient. At 0929 hours, Respondent again withdrew another 5 mg of Versed for this patient.

9 Therefore, Respondent withdrew a total of 15 mg of Versed for this patient on March 12, 2009.
10 Respondent documented administration on the patient's MAR as follows: 1 mg of Versed at
11 0805 hours, 1 mg of Versed at 0820 hours, 1 mg of Versed at 0825 hours, 1 mg of Versed at 0840
12 hours, 1 mg of Versed at 0850 hours, 1 mg of Versed at 0920 hours, and 1 mg of Versed at 0930
13 hours. Therefore, Respondent documented administration to this patient of a total of 7 mg of
14 Versed. However, Respondent failed to document administration or wastage of the remaining 8
15 mg of Versed.

16 b. On March 12, 2009 at 0649 hours, Respondent withdrew 250 mcg of fentanyl for
17 this patient from the Pyxis machine. At 0814 hours, Respondent withdrew another 250 mcg of
18 fentanyl for this patient. At 0929 hours, Respondent again withdrew another 250 mcg of fentanyl
19 for this patient. Therefore, Respondent withdrew a total of 750 mcg of fentanyl for this patient on
20 March 12, 2009. Respondent documented administration on the patient's MAR as follows: 50
21 mcg of fentanyl at 0805 hours; 50 mcg of fentanyl at 0820 hours, 50 mcg of fentanyl at 0825
22 hours, 50 mcg of fentanyl at 0840 hours, 50 mcg of fentanyl at 0850 hours, 50 mcg of fentanyl at
23 0920 hours, and 50 mcg of fentanyl at 0930 hours. Therefore, Respondent documented
24 administration to this patient of a total of 350 mcg of fentanyl. However, Respondent failed to
25 document administration or wastage of the remaining 400 mcg of fentanyl.

26 17. Patient D: On March 13, 2009, this patient had a standing order for fentanyl and
27 Versed. On March 13, 2009, Respondent diverted a total of 500 mcg of fentanyl and 4 mg of
28 Versed from this patient as follows:

1 a. On March 13, 2009 at 0701 hours, Respondent withdrew 5 mg of Versed for this
2 patient from the Pyxis machine. At 0739 hours, Respondent returned 5 mg of Versed to be re-
3 stocked in the Pyxis machine. At 0838 hours, Respondent withdrew 5 mg of Versed for this
4 patient. At 0936 hours, Respondent withdrew another 5 mg of Versed for this patient. At 1051
5 hours, Respondent again withdrew 5 mg of Versed for this patient. Taking into account the
6 amount that was restocked in the Pyxis machine, Respondent withdrew a total of 15 mg of Versed
7 for this patient on March 13, 2009. Respondent documented administration on the patient's MAR
8 as follows: 1 mg of Versed at 0825 hours, 1 mg of Versed at 0830 hours, 1 mg of Versed at 0842
9 hours, 1 mg of Versed at 0900 hours, 1 mg of Versed at 0905 hours, 1 mg of Versed at 0925
10 hours, 1 mg of Versed 0940 hours, 1 mg of Versed at 0950 hours, 1 mg of Versed at 1020 hours,
11 1 mg of Versed at 1030 hours, and 1 mg of Versed at 1055 hours. Therefore, Respondent
12 documented administration to this patient of a total of 11 mg of Versed. However, Respondent
13 failed to document administration or wastage for the remaining 4 mg of Versed.

14 b. On March 13, 2009 at 0701 hours, Respondent withdrew 250 mcg of fentanyl for
15 this patient from the Pyxis machine. At 0739 hours, Respondent returned 250 mcg of fentanyl to
16 be re-stocked in the Pyxis machine. At 0838 hours, Respondent withdrew 250 mcg of fentanyl for
17 this patient. At 0937 hours, Respondent withdrew another 250 mcg of fentanyl for this patient.
18 At 1051 hours, Respondent again withdrew 250 mcg of fentanyl for this patient. At 1052 hours,
19 Respondent withdrew an additional 250 mcg of fentanyl for this patient. Taking into account the
20 amount that was restocked in the Pyxis machine, Respondent withdrew a total of 1,000 mcg of
21 fentanyl for this patient on March 13, 2009. Respondent documented administration on the
22 patient's MAR as follows: 50 mcg of fentanyl at 0825 hours, 50 mcg of fentanyl at 0830 hours,
23 50 mcg of fentanyl at 0842 hours, 50 mcg of fentanyl at 0900 hours, 50 mcg of fentanyl at 0905
24 hours, 50 mcg of fentanyl at 0925 hours, 50 mcg of fentanyl at 0940 hours, 50 mcg of fentanyl at
25 0950 hours, 50 mcg of fentanyl at 1020 hours, 50 mcg of fentanyl at 1030 hours, and 50 mcg of
26 fentanyl at 1055 hours. Therefore, Respondent documented administration to this patient of a
27 total of 550 mcg of fentanyl. However, Respondent failed to document administration or wastage
28 for the remaining 450 mcg of fentanyl.

1 18. Patient D: On March 16, 2009, this patient had a standing order for fentanyl and
2 Versed. On March 16, 2009, Respondent diverted a total of 100 mcg of fentanyl and 2 mg of
3 Versed from this patient as follows:

4 a. On March 16, 2009 at 1331 hours, Respondent withdrew 100 mcg of fentanyl for
5 this patient from the Pyxis machine. At 1402 hours, Respondent withdrew another 100 mcg of
6 fentanyl for this patient. Therefore, Respondent withdrew a total of 200 mcg of fentanyl for this
7 patient on March 16, 2009. Respondent documented administration on the patient's MAR as
8 follows: 50 mcg IV of fentanyl at 1505 hours and 50 mcg IV of fentanyl at 1520 hours.

9 However, Respondent failed to document administration or wastage of the remaining 100 mcg of
10 fentanyl.

11 b. On March 16, 2009 at 1332 hours, Respondent withdrew 2 mg of Versed for this
12 patient from the Pyxis machine. Respondent failed to document administration on the patient's
13 MAR of this medication. There is no record of wastage for this medication. Therefore, 2 mg of
14 Versed are unaccounted for.

15 19. Respondent was confronted by the Nursing Director and Nursing Manager at Mission
16 Hospital with the narcotic discrepancies. Respondent admitted that he had a problem with
17 narcotics and that he could not account for the missing drugs. Respondent resigned from Mission
18 Hospital on March 9, 2009, with his official "last day" of March 23, 2009. On March 19, 2009,
19 Mission Hospital filed a complaint with the Board against Respondent for his diversion of
20 narcotics.

21 20. Respondent was interviewed by a DOI investigator on February 23, 2010. During the
22 interview, Respondent admitted that he resigned from Mission Hospital because he needed to get
23 away from nursing because he had an addiction to narcotics. When asked if he took the
24 unaccounted for narcotics, Respondent admitted that he had "skimmed off the top." Respondent
25 also admitted to self-administering the narcotics that he "skimmed off the top" from his patients.
26 Respondent admitted that he self-administered while on duty as a registered nurse.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Obtain Controlled Substances Unlawfully)**

3 21. Respondent is subject to disciplinary action for unprofessional conduct under section
4 2762(a) for obtaining and possessing controlled substances unlawfully in violation of Business
5 and Professions Code section 4060 and Health and Safety Code sections 11170(a) and 11173(a)
6 as is more particularly set forth in paragraphs 13 through 20 above, and incorporated herein as
7 though set forth in full.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct – Use of Controlled Substance in a Dangerous Manner)**

10 22. Respondent is subject to disciplinary action under section 2762(b) of the Code for
11 unprofessional conduct in that Respondent used a controlled substances in a manner dangerous to
12 himself and the public, as evidenced by his conduct and admissions, as is set forth in paragraphs
13 13 through 20, above, which are incorporated by reference.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct - Falsify or Make Grossly Incorrect or Inconsistent Entries)**

16 23. Respondent is subject to disciplinary action for unprofessional conduct under Code
17 section 2762(e) for falsifying or making grossly incorrect, inconsistent and/or unintelligible
18 entries in the hospital records by withdrawing medication from the Pyxis machine, charging the
19 withdrawal to patients who did not receive the drugs or for whom Respondent did not document
20 administration or wastage of the drugs as is more particularly set forth in paragraphs 13 through
21 20 above, and incorporated herein as though set forth in full.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board of Registered Nursing issue a decision:

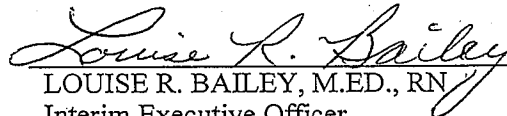
25 1. Revoking or suspending Registered Nurse License Number 551550, issued to Dirk R.
26 DeRoggenbuke;

1 2. Ordering Dirk R. DeRoggenbuke to pay the Board of Registered Nursing the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 3. Taking such other and further action as deemed necessary and proper.
5
6

7
8 DATED: _____

8/17/10



LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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